

# Health Inquiry Is Asked

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Special Prosecutor Leon Jaworski asked yesterday for an official court inquiry to determine whether former President Nixon is too ill to testify at the Watergate cover-up trial.

Mr. Nixon is scheduled to enter a hospital in Long Beach, Calif., early next week—most likely Monday—for tests and treatment of a recurrence of phlebitis, sources in the San Clemente compound said yesterday.

The former President was reported yesterday to be somewhat depressed and still suffering pain from the phlebitis in his left leg despite the medication he is taking.

Jaworski suggested that U.S. District Court Judge John J. Sirica first call in Mr. Nixon's lawyers for a report on his condition and then, if necessary, appoint a team of medical experts to examine the ex-President in California.

Sirica took no immediate action on the proposal, but he did reject a request by former White House aide John D. Ehrlichman for a trial delay because of public reports concerning Mr. Nixon's poor health.

Both Jaworski and Ehrlichman have subpoenaed Mr. Nixon to testify at the cover-up trial which is scheduled to start Oct. 1.

In a three-page motion opposing any postponement, the Watergate prosecutor said there was "presently no sound basis" for concluding that the former President's health is so precarious that he will not be able to take the witness stand during the prolonged trial.

Jaworski acknowledged, however, that Mr. Nixon's condition was a valid concern and said that "the government has just as much interest in securing Mr. Nixon's testimony" as Ehrlichman does.

Watergate prosecutors were forced to subpoena Mr. Nixon when lawyers for the six defendants in the cover-up case

refused Wednesday to forego the former President's testimony on the authenticity and integrity of White House tapes and documents that he handled. FBI agents served the government summons on Mr. Nixon at his San Clemente, Calif., estate Thursday night.

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Federal marshals served two other subpoenas on the former President at the same time.

One involved a civil suit brought by Henry Rothblatt, the former lawyer for four of the original Watergate break-in defendants, on the grounds that his clients were pressured into firing him.

The other was a demand by

Ehrlichman's lawyers for all tapes, documents and other records "which refer to or relate to" the alleged cover-up of the scandal.

The Ehrlichman subpoena for Mr. Nixon's personal testimony was served on Aug. 28.

Nixon lawyers here refused again yesterday to say what stance they would take in the face of the cover-up trial subpoenas although they have already suggested, in an unrelated civil suit, that Mr. Nixon has been too ill to give even a deposition.

Mr. Nixon's decision to enter a hospital came after a week of urging by his doctors, who wanted it so anti-coagulant treatment of his phlebitis could start.

A drug, given intravenously at first, is used to dissolve the blood clot in his upper leg. If the clot is large enough, it could block the major vein in the lung and cause death.

While the drug is being given, doctors will keep on continual check on the time it takes for the former President's blood to clot.

Mr. Nixon's doctors urged him to go into a hospital on Sept. 13, but he refused.

On Tuesday, Dr. John C. Lungren of Long Beach again urged Mr. Nixon to go to the hospital.

The former President will go to Memorial Hospital Medical Center of Long Beach, a 617-bed facility where Lungren normally practices. It is 50 miles north of San Clemente. Hospital sources said Mr. Nixon is expected to remain there for two or three days.

Sources inside the San Clemente compound, where Mr. Nixon has spent almost all his time since he resigned Aug. 9, said the former President "is not really" feeling well.

He was visited this week by his daughter, Julie Nixon Eisenhower, who flew west

Thursday in a government courier plane.

As for a deposition from Mr. Nixon, Jaworski indicated yesterday that the Watergate prosecutors are more willing to settle for one than Ehrlichman's lawyers are.

If Sirica decides Mr. Nixon is fit enough to come here and testify, Jaworski said, "that should end the matter." But if a medical examination shows that he is unable to appear, the prosecutor maintained that Mr. Nixon's deposition could be taken in California.

The alternative course, Jaworski said, is to wait until the trial starts Oct. 1 "to see if Mr. Nixon appears in response to the subpoenas and, if he does not, to take such action at that time as it deems appropriate."

The prosecutors face stiff resistance from defense lawyers to any effort to settle for a deposition instead of Mr. Nixon's appearance on the witness stand at the trial.

Federal court rules governing criminal cases permit only defendants to take the depositions of witnesses who are unable to appear in person, according to knowledgeable attorneys.

The only way for the government to get a deposition is under the Organized Crime Act of 1970 and then only upon certification of "the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity."

According to informed sources, Watergate prosecutors told defense attorneys at a closed meeting Wednesday that they feel they can get such a certification for the cover-up trial. Defense lawyers maintain such exceptions were meant only for cases involving Mafia figures and criminal of violence.